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October 3, 2011

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Communication
***Connect America Fund*, WC Docket No. 10-90**
***A National Broadband Plan for Our Future*, GN Docket No. 09-51**
***High-Cost Universal Service Support*, WC Docket No. 05-337**
***Developing Unified Intercarrier Compensation Regime*, CC Docket No. 01-92**
***Federal-State Joint Board on Universal Service*, CC Docket No. 96-45**
***Lifeline and Link-Up*, WC Docket No. 03-109**
***Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42**

Dear Ms. Dortch:

We submit this notice in compliance with Section 1.1206(b) of the Commission's rules.

On Monday October 3rd, Free Press policy director Matt Wood, political adviser Joel Kelsey and research director S. Derek Turner met with Zac Katz, Chief Counsel and Senior Legal Advisor to Chairman Genachowsi; Rebekah Goodheart, Eric Ralph and Mark Wigfield of the Wireline Competition Bureau; and Michael Steffen of the Office of General Counsel.

Mr. Wood and Mr. Kelsey were present in person and Mr. Turner joined via telephone. The purpose of our meeting was to discuss Free Press' August 24th comments in response to the Commission's *Further Inquiry* in the above dockets.

During the meeting, we reiterated our concerns about the Intercarrier Compensation (ICC) "reform" components of the ABC and RLEC plans (together, the "joint-industry framework") offered by six major price cap carriers and certain rural carrier associations. We suggested that were the Commission to approve anything that resembles this industry-authored plan, it would represent the worst example of regulatory capture and could only be characterized as a stunning example of bad government.

In our meeting, we emphasized the following points regarding the joint-industry framework, and warned the Commission not to endorse the underlying rationale of that framework:

- Despite the industry's pitch of its ICC changes as "pro-consumer," no single consumer advocacy organization has expressed support for these proposed "reforms." In fact, there is united consumer advocate opposition in the record to the plan's increases in end-user rates.
- We disputed the notion that consumers would see a net benefit (or even a gross benefit) from FCC-mandated reductions to ICC at a $0.0007 rate. For example, we noted the market structure of the wireless industry is such that these carriers do not charge per-minute rates; and explained that carriers are highly unlikely to pass on, in the form of lower monthly bills for consumers, any cost savings the carriers will reap from ICC payment reductions. These carriers operate in a highly concentrated market, largely immune from the normal forces of marketplace competition that drive prices down as carriers' own-costs decline. These carriers focus chiefly on increasing average-revenues-per-user (ARPU) and are instead likely to return any value from the savings to shareholders; the only "value" consumers might possibly see from ICC reform is higher buckets of monthly calling minutes (that are not demanded) for the same or higher price (consistent with the changes seen in the wireless industry over the past decade).
- We noted that there was *zero* evidence in the record for the notion that these specific changes would be in any way beneficial to consumers. The Commission cannot simply reiterate the bromides of the companies it regulates when justifying rule changes sought by those very same companies. The Commission must make every attempt to quantify the costs and benefits of these rule changes, and examine the distributional impacts.
- We strongly emphasized our opposition to any increases in the Subscriber Line Charge (SLC) or any successor or similar mechanism.
    - We noted first that the SLC is a Commission-authorized charge for regulated incumbent local exchange carriers to recover the interstate portion of the cost of the local loop. The Commission in this effort is essentially creating a change in the *intrastate* revenues collected by ILECs, and the SLC is not an appropriate vehicle for recovering these lost revenues (even assuming such revenue recovery is justified, which it plainly is not).
    - We noted that the *CALLS Order* required the Commission to conduct cost studies prior to increasing the SLC above $5.00 per month. The cost-model eventually relied upon by the FCC, as described in its *2002 SLC Cost Review Proceeding Order*, showed that a $6.50 monthly SLC lead to an over-recovery of costs in 82 percent of price cap carrier loops. We pointed out how since that time, advances in technology along with increased use of local loops for unregulated services meant the current federal portion of the regulated forward-looking costs of the local loop were likely even lower than they were in 2002. In other words, further increases to the SLC are completely unjustified because they would in all likelihood only exacerbate this level of over-recovery.
    - We strongly suggested therefore that the Commission not move forward with SLC increases, *or any other regulatory-approved end-user rate increases*, without first conducting cost-recovery studies. We suggested that when these studies are done, the Commission take great care to ensure all data and analysis are made available to the public, and that the Commission avoid the problems that plagued the post-CALLS proceeding. To that end, we urge the FCC to conduct a public proceeding

on the appropriate model or models *before* making decisions about the model's results. We noted how the current debate around the opaqueness of the CQBAT model is a good example of the perils of relying on non-transparent industry models.

- We once again noted that the Commission's continuing failure to address judicial separations and cost-accounting, along with its inattention to the X-factor and its abandonment of prior commitments to modernize the rate-of-return system, all mean that the agency has little idea of the actual costs that ILECs are entitled to recover. Thus the Commission has absolutely no basis for increasing SLCs or establishing any other new revenue recovery mechanism (including a new access recovery fund), as it has no idea what costs need to be recovered.
- We also expressed disappointment with the Commission's apparent current philosophy that *all* costs must be recovered either through end-user charges or USF payments. This is a radical departure from Commission policy implementing the "calling-party-pays" principle.
- We noted that the adoption of the single $0.0007 rate was in direct conflict with the Act's expectation that rates be "reasonable."
- We noted that if the ABC plan's ICC reforms were adopted, it would unjustly enrich and reward Verizon and AT&T – vertically integrated IXC and wireless carriers that would reap billions in *net* savings as a result of FCC-mandated lower access payments while also reaping billions more in higher SLC charges from vulnerable consumers.
- We explained that the Commission has simply failed to make the case as to why uniform ICC "reform" that requires below-cost rates in some instances is beneficial for consumers or for the American economy as a whole, nor why such "reform" would in any way facilitate greater broadband deployment. To give this massive gift to the most politically connected carriers while claiming it is needed to benefit consumers would make no sense, and is unsupported in the record.
- We also pointed out how the failure of the ABC plan to account for revenues from non-telecommunications services before adjusting ICC payments would continue the unjust enrichment of certain LECs on the backs of consumers.
- We noted that the joint-industry framework is silent on the impact of its proposed SLC increases on Lifeline consumers, in contrast to the modified CALLS proposal adopted by the Commission in 2000. The ABC/RLEC plan will lead to rate increases for all basic telephone subscribers, but low-income Americans would feel the greatest impact of this FCC-approved rate increase. To maintain consistency with Section 254 and the overarching goals of the Act, the Commission has a duty to protect all Americans from unjust rates, but particularly participants in the Lifeline program. We noted however that increasing Lifeline payments would also increase the overall size of the USF, and further increase all ratepayers' monthly burden, itself in conflict with the goals of Section 254. Given this Morton's Fork of a choice, we would suggest holding Lifeline consumers harmless, as the impact of not doing so is more direct and apparent than increasing the overall ratepayer USF

burden. However, this is a catch-22 of the Commission's own making, since it is under no obligation to adopt the ABC/RLEC plan, nor is it obligated to increase end-user charges. There are better methods for modernizing the USF and ICC system, but for some reason the ILECs' and RLECs' veto of those sensible ideas equates to a Commission veto of those sensible ideas.

  - We noted that increasing end-user rates would disproportionately impact the very same populations that are currently on the wrong side of the digital divide. The FCC is rightly concerned with the low levels of broadband adoption by low-income earners, seniors and other non-adopting segments of the American population. But increasing end-user charges will increase pressures on these Americans to choose between forms of communications; for most, Internet access will become an even more unaffordable luxury, since their income will be effectively reduced by the FCC-authorized basic phone service rate increases. If the Commission is at all serious about closing the digital divide, it should look for other ways to alter ICC that do not impose unjustifiable rate increases on end-users. The wish-lists of the companies it regulates should not take precedence over the consumers the Commission is charged with protecting from abuses by those same monopolists.

- We expressed concern with the ABC plan's use for determining support of a cost model that does not consider all revenues earned (or potentially earned) by supported providers from services offered over the supported infrastructure. One of the problems with the current USF, as detailed by the National Broadband Plan, is the failure to consider all such revenues when determining support.

- We noted that in 2000 the Commission first sought comment on the CALLS proposal, and then sought comment again prior to adopting the modified CALLS proposal. Yet in the instant proceeding, the Commission's public notices have all been incredibly vague as to which policy direction the Commission will ultimately adopt. We noted that even the August *Further Inquiry*, while seemingly centered around the ABC/RLEC plan, still sought comment on the fundamentally different State Members' plan, leaving the public with no clear idea as to what *rules* are being proposed. We asked the FCC to maintain consistency with past Commission action in the CALLS proceeding and the 2008 abandoned global reform effort by Chairman Martin, by releasing the text of the final, actual proposed USF and ICC rule changes prior to scheduling a vote on the item. The Commission has the duty to reveal its preferred policy direction prior to voting on an item, even if the item is then modified somewhat prior to a vote.

- Finally, we agreed with comments submitted by other consumer advocates in this proceeding, which suggest that below-the-line costs like the SLC are often a way for ILECs to hide the true costs of their services at the point of sale. We endorsed any Commission effort to make prices more transparent for end users. However, we noted that a price increase is still a price increase, no matter if it disclosed and no matter whether it is above or below the line. Transparency only works in a consumer's favor if there is meaningful marketplace competition. The market for basic local phone service remains a monopoly. The FCC has the legal obligation to protect consumers from unjustified rate hikes in that market. It cannot wash its hands of that obligation simply by making FCC-approved hikes more transparent.

Sincerely,

_____/s/_____

S. Derek Turner
Research Director
Free Press

cc: Zac Katz
Rebekah Goodheart
Eric Ralph
Mark Wigfield
Michael Steffen